UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28

PUBLIC SERVICE COMPANY OF NEW MEXICO[1]

Employer

and **28-RC-6158**

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE U.S. AND CANADA, LOCAL 412, AFL-CIO[2]

Petitioner

DECISION AND ORDER

In its amended petition, the Petitioner seeks a unit comprised of 45 classifications of natural gas employees employed at four of the Employer's facilities (also referred to as service centers or town plants) located in Grants, Gallup, Farmington and Chama, New Mexico (herein referred to as the "four-town unit"). In the alternative, the Petitioner seeks a unit comprised of 45 classifications of natural gas employees employed at the Employer's facilities located within the jurisdiction of Jerold Freeman, Director of Midwest Gas and Electric Operations ("Midwest operations unit"). The Employer contends that the only appropriate unit is a natural gas system-wide unit located at the 27 Employer's facilities where the Employer's natural gas employees work.

The Petitioner and the Employer agree that regardless of what unit is found appropriate, the 34 job classifications of employees who maintain, repair and install the Employer's natural gas pipelines and distribution lines should be included in that unit. The Petitioner, however, would also include the following additional 11 job classifications in whatever unit is found appropriate: Customer Service Representative I, II, Sr. and Coordinator (collectively referred to as "CSRs"), Meter Reader I, II, Sr. and Coordinator (collectively referred to as "meter readers"), Designer I, II and Sr. (collectively referred to as "designers"). The 34 maintenance, repair, and installation classifications, together with the CSRs, meter readers and designers are collectively referred to as "gas operation employees." The gas operation employees in the four-town unit requested by the Petitioner, including 13 employees in the CSR categories, consists of 53 employees. The gas operation employees in the alternative Midwest Operations Unit requested by the Petitioner, including 14 employees

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[1] The name of the Employer appears as corrected at the hearing.

[2] The name of the Petitioner appears as corrected at the hearing.

in the CSR categories, consists of 136 employees. Contrary to the Petitioner, the Employer contends that the 11 classifications of CSRs, meter readers and designers should be excluded from any unit found appropriate. The system-wide unit proposed by the Employer, including 131 employees in the CSR categories, consists of 439 employees.

There is no bargaining history in any of the proposed units. For the reasons discussed in detail below, I find that neither of the units proposed by the Petitioner, both of which are less than system-wide, constitutes a well-defined administrative segment of the Employer's organization and that neither of these units can be established without undue disturbance to the Employer's ability to perform its necessary functions. I further find that there is no compelling evidence that collective bargaining in either of these two units is a feasible undertaking, and that establishing either of these units would unduly fragment the Employer's operations. Accordingly, for these reasons, as explained in greater detail below, I am dismissing the petition.

DECISION

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. **Hearing and Procedures:** The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. **Jurisdiction**: The parties stipulated, and I find that the Employer, Public Service Company of New Mexico, a New Mexico corporation, with its principal office and place of business in Albuquerque, New Mexico, is engaged in providing electrical power and natural gas service as a public utility to commercial and residential customers in the State of New Mexico. During the past calendar year, the Employer had gross revenues in excess of $1,000,000. During the same period, it purchased and received at its New Mexico facilities goods and materials valued in excess of $50,000 directly from suppliers located outside the state of New Mexico. I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and is subject to the jurisdiction of the Board.

3. **Claim of representation**: The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. **Statutory Question:** As more fully set forth below, no question concerning commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act**.**

5**.** **Unit Finding:** This case presents the issue of whether either of the units sought by the Petitioner is appropriate for bargaining with this public utility company. For the following reasons, I have concluded that neither of the units is appropriate:

A. The Employer's Operations, Hierarchy and Working Conditions

The Employer, an electric and gas utility company, provides electric and natural gas services to residential and commercial customers. It sells electricity and provides electric transmission capacity to third parties who transport it outside New Mexico. The Employer also provides 50% of New Mexico with electricity. The Employer does not generate any of its own natural gas and does not own any gas production facilities but instead purchases the natural gas that it distributes to its customers. The Employer operates a natural gas pipeline and a natural gas distribution system that provides natural gas services to residential and business customers in about 100 communities in New Mexico, a natural gas service territory that covers about 80 to 85% of New Mexico. (While pipelines have larger pipes than transmission lines and operate at higher pressures, the term "pipelines" herein is used for either or both transmission lines or pipelines.) The Employer also provides a pipeline service for natural gas shippers who purchase natural gas from suppliers in or outside New Mexico and transport it to either the gas shippers' customers in or outside New Mexico or to other pipelines.

Reporting to President and Chief Executive Officer Jeffrey Sterba are six divisions: "Gas and Electric Operations" is headed by Executive Vice President Roger Flynn; "People Services and Development" (sometimes referred to as "Human Resources" or "HR") is headed by Senior Vice President Alice Cobb; "Corporate Strategy and Development" is headed by Senior Vice President Max Maerki; "General Counsel" is headed by Senior Vice President Patrick Ortiz; "Public Policy" is headed by Senior Vice President William Real; and "Administration and Finance" is headed by Senior Vice President John Loyack. The Gas and Electric Operations division, in turn, encompasses seven departments, including "Operations and Engineering," headed by Vice President Melvin Christopher; "Construction and Reliability," headed by Vice President John Myers; and "Customer Service," headed by Vice President Sarita Loehr.

The Employer employs natural gas service employees at three facilities in Albuquerque and 24 additional facilities (also referred to as service centers or town plants) at various locations in New Mexico. A structural realignment of the Employer occurred in August 2002, and the Employer has grouped these facilities into three separate geographical districts, overseen by separate directors, all of whom report to Operations and Engineering Department Vice President Melvin Christopher. These districts are as follows:

The Northern Operations District—Director Deborah O'Callahan oversees Operating and Engineering employees in this district that includes the following four cities of New Mexico: Santa Fe, Espanola, Taos, and Las Vegas.

The Southern Operations District—Director Wallace "Buster" Dossey oversees Operating and Engineering employees in this district that includes 13 facilities located in the following cities and towns of southern New Mexico: Clayton, Tucamcari, Silver City, Deming, Truth or Consequences, Anthony, Alamogordo, Carlsbad, Artesia, Roswell, Lovington, Portales, and Clovis.

The Midwest Operations district—Director Jerold Freeman oversees this district that includes eight facilities in the following northwestern New Mexico locations: Albuquerque (three facilities), the Belen gas meter shop, and the natural gas service centers in Farmington, Gallup, Grants, and Chama, New Mexico.

The Petitioner seeks a unit of gas operation employees working out of four (Grants, Gallup, Farmington and Chama) of the eight facilities in the Midwest Operations district (herein referred to as "four-towns"). In the alternative, it would agree to proceed to an election in a broader unit which would include gas operation employees working out of each of the Employer's facilities located within the jurisdiction of Midwest Operations district Director Freeman. In support of its position, the Petitioner points to evidence in the record that on August 2002, the Employer implemented a "realignment" which involved consolidating several areas and reducing operational and maintenance costs due to an anticipated delay in deregulation of the market. Before August 2002, the four-towns were part of an administrative unit called the Northwest Area. Diana Luck was the area manager for the Northwest Area. The four-towns' facilities, as well as other facilities, were included in a larger division then known as "Northern Operations" and were overseen by Director Danny Summers. Area Manager Luck reported directly to Northern Operations Director Summers and had responsibility for the safe and reliable delivery of gas to the four-towns. Summers reported directly to Vice President of Operations and Engineering Christopher. Around August 2002, Danny Summers ended his employment with the Employer, and O'Callahan became director of Northern Operations. The four-towns' facilities were then consolidated into the Midwest Operation district. Some of the other facilities in the Northern Operations were consolidated into the Southern Operations district, while others remained in the North Operations district. After the August 2002 reorganization, Dianna Luck's job title changed from Area Manager II to Area Manager I. However, her duties were very similar under both job titles, and as area manager she provided direction and coordination of gas distribution and transmission operations for a large geographic area covering the four-towns.

Midwest Operations District Director Freeman reports to Vice President of Operations and Engineering Christopher and not only has responsibilities over the four-town facilities within his jurisdiction, but also has responsibilities over three facilities in Albuquerque and one facility in Belen, New Mexico. Currently, there are a small number of employees within Freeman's district that are already represented by the Petitioner. Two separate collective-bargaining agreements between the Employer and the Petitioner cover these employees. The first Petitioner-represented unit is exclusively comprised of 40 service, general and master technicians, utility workers, coordinators and trainees that regularly work for the Employer and its gas distribution system serving Albuquerque and the immediately surrounding territory (herein referred to as Albuquerque gas service technician bargaining unit). The collective-bargaining agreement between the Employer and the Petitioner covering this bargaining unit is effective from September 20, 2000, to September 19, 2006. The other Petitioner-represented unit is exclusively comprised of nine customer service dispatchers regularly employed by the Employer and headquartered in the Albuquerque Gas Service Center (herein referred to as Albuquerque gas service dispatchers unit). The collective-bargaining agreement between the Employer and the Petitioner, covering the latter unit is effective from June 1, 2000, to May 31, 2005.

As noted, the Employer provides both electrical and gas service in New Mexico. The Petitioner has never represented and does not seek to represent any employees employed in the electrical side of the Employer's business, and no party contends that such a crossover would be appropriate. Another labor organization, the International Brotherhood of Electrical Workers, Local 611, AFL-CIO (herein referred to as "IBEW Local 611"), currently represents a unit of employees who work on the Employer's electric utility system, or more specifically, all employees of the Employer's electric and water transmission, distribution and production departments in the divisions and jobs referenced in the collective-bargaining agreement between the Employer and IBEW Local 611, effective from May 1, 2000, to May 1, 2003.

Within Albuquerque, New Mexico, there is one remaining part of gas operations, New Service Delivery, overseen by Director Albert Burke Sr., who reports to John Myers, Vice President of Construction and Reliability. The seven gas operation employees working in the Construction and Reliability department, including one employee in the disputed category, build new gas and electric distribution lines for new residential and commercial construction. These seven employees work out of the Albuquerque Electric Service Center in Albuquerque, and in the combination gas and electric service centers in Bernalillo and Belen. Albuquerque, Bernalillo, and Belen fall within Director Freeman's geographic jurisdiction. While Director Freeman and the employees working under him do not perform new service delivery work in Albuquerque, Bernalillo, and Belen, they perform new service delivery work in the remaining areas of Freeman's geographic jurisdiction.

The three directors working under Vice President Christopher are responsible for the day-to-day operations of systems, the delivery of natural gas and electricity, the safety and the reliability of the operations, and the management of employees within their organizational and geographic jurisdiction. Each of the three directors has various managers reporting to them. Some of these managers oversee one or more facilities, and some of these managers directly supervise gas operation employees. Other managers have supervisors who directly supervise the gas operation employees.

The Employer's budgeting process is centralized. Gas and Electric Vice President Flynn provides department vice presidents working under him with overall budget objectives, along with expectation "targets," and these vice presidents in turn provide set budget targets to managers and supervisors working under them. The vice presidents provide these managers and supervisors with set operating costs to work within. Except for employees currently represented by a labor organization, the Employer has set wages (with minimal, midpoint, and maximum ranges) across New Mexico for employees in various job classifications. A merit pay increase for an employee needs the approval of the employee's first and second level supervisor, and the director's approval. The department vice president's approval is needed if the increase exceeds a certain set ratio. The Human Relations department reviews these merit increases to ensure standardization and to ensure equity to various employee groupings.

In addition to system-wide wage rates, the Employer also has system-wide uniform job descriptions for its various job classifications. The Employer maintains numerous system-wide compensation and benefits, code-of-conduct, and personnel policies relating to leave of absence, promotion, transfer, grievance, and discipline, developed by the Employer's HR department and approved by the Employer's high-level managers. The Employer also has a centrally prepared "Gas Training Manual," which is available at each of the Employer's gas operation facilities across New Mexico, and which is the Employer's "primary source of policies and procedures" for operating its pipeline and distributions systems.

Department vice presidents make the final decision whether or not to increase their employee complement, and at times, vice presidents have instituted a hiring freeze or developed criteria regarding when a vacancy can be filled. However, to fill a vacancy without expanding staffing levels, the immediate supervisor makes the hire recommendation, and the recommendation moves up the command chain to the director. The director frequently keeps the vice president informed about the hiring. The Employer's HR department is also involved in the hiring process. When there is an opening, HR may advertise the position, and HR makes sure that the opening, along with the HR-generated job description, is posted on bulletin boards on the company's system-wide intranet. HR performs an initial screening of applications for qualified applicants. Before any interviews of applicants, HR provides the supervisor with categories of under-represented employees for purposes of affirmative action. HR also performs a salary assessment to determine the salary range for the applicant and sends out letters to applicants notifying them that they have been selected for the position and stating the salary range the Employer is offering. The personnel files of employees across New Mexico are kept in the HR department in Albuquerque. Several first level supervisors maintain complimentary personnel files. The Employer's performance evaluation forms were developed by HR, and, except for a minor modification in the forms when used in the Southern Operations District, the forms are used unchanged by managers and supervisors across New Mexico.

While directors decide whether or not to temporarily transfer employees within their areas, the department vice president must approve the permanent transfer of an employee within that or another director's area. The department vice president also makes the final decision regarding promoting an employee to a higher paying job classification. The vice president makes the decision after the supervisor's recommendation has gone to the manager and the director and HR has reviewed the promotion request. Similarly, a company decision to demote an employee is made at the department vice president level. Furthermore, in August 2002, Department Vice President Christopher and HR Vice President Cobb made the decision as to the number of employees and which employees were to be laid off from the Northern, Southern and Midwest operations. Leaves of absence without pay must be approved by the department's and HR's vice presidents.

The Employer's progressive discipline policy, entitled "Positive Discipline," provides that an immediate supervisor can decide to engage in "coaching" and in giving an "oral reminder" to an employee on his or her own. If a "written reminder" is to be given by the immediate supervisor to the employee, the immediate supervisor must consult with HR and the next level of supervision before speaking to the employee. Before placing an employee on “decision making leave” (suspension) or discharging the employee, the immediate supervisor “must consult” with area management and the HR director or department vice president before talking to the employee. Final approval of written reminders rest with a department vice president such as Christopher. At times, the Employer’s in-house legal department assists HR and the department vice president in discharge decisions.

B. Employee Interchange

While a department vice president has the final authority to permanently transfer an employee to another operation, there has been little or no permanent transfers of gas operation employees from one operation to another operation (such as the Midwest, the Northern and the Southern Operation) under Vice President Christopher. For instance, the last time that an employee transferred from another operation to the Southern Operations district was five to seven years ago.

There have also been relatively few temporary transfers of gas service employees between these operations. Natural gas employees have temporarily transferred to assist employees in other operations when there have been emergencies, natural gas “outages” such as the interruption of services caused by the huge fire in Los Alamos, located in the Southern operations district. Similarly, around 1999 or 2000, the Employer had a broken main line around Chama, New Mexico, and service technicians from Santa Fe, Espanola, and Taos, New Mexico, in the current Northern operations district area, assisted employees in the Northwest Operations district in resuming gas service for these customers. In the past service technicians from Albuquerque have been sent to Clovis (in the Southern operations district) for approximately a week to deal with an outage.

However, there appears to be more permanent and temporary transfers within the current Midwest operations district, between natural gas employees based in, or around, Albuquerque and those in the four-town area, especially Farmington. Foremen and crewmen from Farmington have been temporarily sent to Albuquerque to assist as inspectors on large transmission projects. After the August 2002 reorganization, a customer service representative (CSR) transferred from the Farmington office to the gas dispatch unit in Albuquerque and an employee from the Belen center permanently transferred to the Chama center. Likewise, inspectors from Farmington have temporarily transferred to Albuquerque for a few months to work on large projects. Farmington also sent a CSR from Farmington to Albuquerque for three or four days to assist in billing problems with a new computer system in customer service.

In addition to transfers within the Midwest Operations, there have been limited temporary transfers of employees among the various operations. More specifically, certain employees working in Albuquerque in New Service Delivery, overseen by Director Burke, who reports to Vice President Myers, have crossed organizational lines and temporarily assisted employees working for directors who report to Vice President Christopher. For instance, line locators or spotters (employees who find underground electric and gas lines) have frequently assisted employees in the Midwest Operations working under Director

Freeman, who reports to Vice President Myers. In the past, Burke temporarily sent a Foreman II from Belen to Silver City in the Southern Operations district to assist in inspection work. Other New Service Delivery employees, employees who work on a crew that uses a mechanical process to bore holes and tunnels underground in order to install gas and electrical cable, have similarly been temporarily assigned to perform their work at different locations in the Southern, Northern, and Midwest Operations districts.

The Employer is in the process of implementing a system, referred to as System Design Process or Fact Based Management, that may facilitate a greater numbers of transfers in the future. This system provides a procedure to allow the Employer to balance its workload requirements. On a weekly basis, the directors working under Vice President Burke and the directors working under Vice President Christopher hold separate meetings to discuss sharing of resources, including personnel. A system design manager attends both meetings to facilitate sharing of resources between the two departments.

C. The Pipeline System and the Effect of a Work Stoppage

The Employer buys natural gas from third party suppliers in the San Juan Basin located in northwest New Mexico, or the Permian Basin located in the southeast part of New Mexico. For the Employer, "[t]he driver of that is the cost of gas," and the Employer tries to buy gas where it is the cheapest. The Employer purchases more than 90% of its gas for the entire state of New Mexico from suppliers in the San Juan Basin and the Williams Torre Alta gas processing plant, which is also known as the Kutz facility; the Williams Lybrook processing plant; and the much smaller Greer plant. The Williams Lybrook and Greer plants are collectively referred to as the Transwestern hub, and are located near Bloomfield, which is approximately ten miles from Farmington. The Transwestern hub has a large facility where a large volume of gas has been collected, processed and then distributed out to various pipelines. The Transwestern hub is a major supplier of natural gas for the cities of Albuquerque, Santa Fe, Los Alamos, and for the Employer's off-systems and on-system shippers. The Employer's 30th Street receipt point, which is located in Farmington, is an "interconnect" between valves of the El Paso Natural Gas pipeline and the Employer's lines which primarily receive gas destined to serve Farmington. Natural gas purchased for the southeast part of New Mexico is normally purchased from the Northwest in order to reduce expenses and facilitate distribution.

The pipeline system used by the Employer is 12,378 miles long. The Employer owns 1,478 miles of the pipelines and others own the remaining 10,900 miles of pipeline. The bulk of the Employer's pipelines are located in the northwest and southeast corners of New Mexico, close to the state's two major natural gas basins. The Employer transports the natural gas to the southeastern and other parts of New Mexico through the El Paso Natural Gas (E.P.N.G) and the Transwestern pipelines, which are owned by third parties. The Employer has no responsibility for building, maintaining or repairing the pipelines owned by other entities. However, the Employer's pipelines and the pipelines owned by third parties are interconnected. There are more than 120 "receipt point" locations, including "interconnects" from which gas can be received or delivered. The Employer can and does receive at these interconnects natural gas from pipelines owned by others for transmission delivery to locations within New Mexico. The Employer has several compressor stations in New Mexico which can cause the gas to move in various directions in the various pipelines located by that compressor station, and which can move the gas in greater volumes in one direction or another.

The Employer's gas control department in Albuquerque manages the delivery of the gas across the system, 24 hours a day, to ensure that that the Employer has adequate gas supplies moving to various parts of New Mexico. The Employer operates a "state of the art" control center in Albuquerque that monitors pressure along its entire pipelines as well as the Employer's pipelines facilities in both the northwest and southwest parts of New Mexico. In a few locations along the pipeline, the Employer, from Albuquerque, can remotely adjust the pressure pipeline area. In the remaining pipeline areas, the Employer sends personnel from facilities close to that pipeline area to adjust the pipeline pressure.

Breakdown of pipelines, frozen pipelines, third parties unintentionally rupturing underground lines, and leaks are part of the Employer's daily operations and can cause an interruption in service. An interruption in service would have an especially critical impact on the area serviced by the Transwestern hub. Director of Midwest Operations Freeman testified that since the majority of the Employer's natural gas is purchased from the Transwestern hub "any interruption in our supply there could impact and will impact all the residential area of Albuquerque, Santa Fe, Las Alamos, all the way up to Red River, and for all of those customers that "utilize our facilities for transporting gas off-system." While the Employer maintains a service center near some of its receipt points, such as the 30th Street receipt point, the Employer does not have a service center by the Transwestern hub in Bloomfield, and, typically, employees, including classifications of employees in the requested unit, stationed in Farmington, have maintenance responsibilities at or by the Transwestern hub. The employees have to travel to the Transwestern hub since these responsibilities cannot be performed remotely. The response time from Albuquerque to Farmington or Bloomfield is approximately three and a half hours. The response time is correspondingly less if there is a problem in a pipeline system closer to Albuquerque. Freeman explained that if there were a work stoppage in the four-town area during a pipeline malfunction, the response time from Albuquerque would be increased significantly, and the Employer's ability to deliver gas would be impaired Freeman further explained that if the Midwest operations district, which includes Albuquerque, was also engaging a work stoppage, the response time to a malfunction around the Farmington or Bloomfield area would be lengthier, and the ability to deliver gas would be even more greatly impaired.

It would be difficult for the Employer to replace the natural gas lost due to an unrepaired malfunction from the southwestern part of New Mexico because of the physical limitations of the Employer's pipeline configuration. To obtain additional gas from interstate pipelines, beyond the amount contracted, the Employer would have to pay monetary penalties. If the Employer had to purchase natural gas from other sources, the Employer would have to pay a higher price due to the emergency basis of the purchase.

The Employer has a formal plan to deal with the possibility of an interruption in the delivery of gas to customers called the "2002 Curtailment Interruption Plan for Gas

Administration and Control." The plan sets forth ten procedures to address an undersupply of natural gas flowing towards the Employer's facilities before the Employer's curtailment plan is triggered. According to the plan, if there is an undersupply (such as an undersupply from the Transwestern hub) caused by loss of supply, capacity or interruption of service that exceeds four hours, then the Employer believes that it has an "emergency condition." If the ten steps fail, the Employer goes to a curtailment plan which means cutting back the supply for the end users based upon a prioritizing of the end users. The 2002 Curtailment plan describes a "worst case" scenario if the Williams Lybrook or certain named other natural gas suppliers in the Northwest were lost. According to this scenario, the entire Northwest System would be placed "in jeopardy" and a request would be made that system-wide curtailment be ordered. The plan further states that major compressor malfunctions at the Star Lake Compressor station (located in the northwestern part of New Mexico) "the backbone of the entire NW system" would "necessitate curtailments most certainly in Albuquerque and Santa Fe immediately, Taos and Red River segments [locations outside of the Midwest operations district] would soon follow if the disturbance were not rectified soon."

D. Legal Analysis and Determination

Under Section 9(b) of the Act, the Board has broad discretion to determine "the unit appropriate for the purposes of collective bargaining" in each case "in order to assure employees the fullest freedom in exercising the rights guaranteed by the Act." *NLRB v. Action Automotive, Inc*., 469 U.S. 490, 494-497 (1985). The Board's discretion extends to selecting an appropriate unit from the range of units which may be appropriate in any given factual setting; it need not choose the most appropriate unit. *American Hospital Association v. NLRB*, 499 U.S. 606, 610 (1991); *P.J. Dick Contracting, Inc*., 290 NLRB 150, 151 (1988).

The Board's long-standing view is that a system-wide unit is optimal in public utility industries. *New England Telephone and Telegraph Co*., 280 NLRB 162 (1986); *Colorado Interstate Gas Co*., 202 NLRB 847 (1973). The Board in *Baltimore Gas & Electric*, 206 NLRB 199, 201 (1973), explained its rationale for adopting this position:

> That judgment has plainly been impelled by the economic reality that the public utility industry is characterized by a high degree of interdependence of its various segments and that the public has an immediate and direct interest in the maintenance of the essential services that this industry alone can adequately provide.

In order to minimize disruptions in essential public services, the Board has been "reluctant to fragmentize a utility's operations" by finding less than a system-wide bargaining unit to be appropriate. The Board has done so "only when there is compelling evidence" that collective bargaining in a unit less than system wide in scope was a feasible undertaking and there was no opposing bargaining history. In *PECO Energy Co*., 322 NLRB 1074, 1079, (1997), the Board, citing *Baltimore Gas & Electric*, supra, 206 NLRB at 201, explained that less than systemwide units may be appropriate where there is no opposing bargaining history, the proposed unit constitutes a "well defined administrative segment of the utility company's organization," and the unit can be established "without undue disturbance to the company's ability to perform its necessary functions."

The Petitioner asserts that there is no opposing bargaining history in this case, that either of its proposed units constitutes a well-defined administrative segment of the Employer's organization, and that the units can be established without undue disturbances to the Employer's ability to perform its necessary functions. The Employer, on the other hand, contends neither of these units constitutes an appropriate unit since neither of the proposed units constitutes a well-defined administrative unit of the Employer, and that a work stoppage in either of these units would impair the delivery of gas elsewhere in the Employer's operations. Based upon the record described above and existing Board law, I have concluded that neither of the units requested by the Petitioner is appropriate for purposes of collective bargaining.

1. Bargaining history:

The bargaining history in this case reveals that there have been, and continue to be, two small bargaining units represented by the Petitioner, limited to a small number of natural gas operation job classifications in a small geographical area, and a larger unit represented by IBEW Local 611, consisting of certain employees working in the Employer's electric and water transmission, distribution and production departments, a unit which does not encompass the natural gas operation employees requested by the Petitioner. I find that there is no opposing bargaining history in a larger unit in this factual situation. See e.g., *Colorado Interstate Gas Co*., 202 NLRB 847, 848 (1973) (Board permits less than system-wide unit in public industry where the employees requested have no history of bargaining "on a broader basis." Moreover, there is no evidence that another labor organization seeks to represent the Employer's employees in a larger, more comprehensive, unit.

2. Well-defined administrative unit:

The Board has often addressed the issue of what constitutes a well-defined administrative unit so as to warrant bargaining on a less than system-wide basis. In *PECO Energy Co*., supra, the Board held that two less than system-wide units in the large utility company constituted appropriate units. It found that an appropriate unit consisting of craft and technical employees employed in the employer's Power Generation Group (PGG) consisting of the employers' non-nuclear fossil, hydro, pumped storage, and combustion turbine units generating stations, encompassed within one of the five strategic business units (SBUs) the employer formed after its 1993 reorganization. It further found an appropriate unit consisting of production and maintenance employees employed in the employer's nuclear generation group (NGG) SBU, a SBU which operated the employers two nuclear generating units, the nuclear maintenance division and a corporate lab. The employer's nuclear and non-nuclear generating stations produced power for transmission through the employer's grid to any customer no matter where located. The Board found these two SBU units did not constitute "the kind of artificial fragmentation" that the Board has traditionally sought to avoid in this industry. The Board found that both these SBUs were "such well-defined administrative segments as to warrant a less than system-wide unit," because, following the employer's 1993 reorganization, each SBU became "semi-autonomous" and each SBU was "intended to operate as an individual profit center," with each business unit concentrating its efforts on achieving maximum return for the employer, and granted a considerable degree of autonomy as to its operations such as entering its own agreements for services from other parts of the employer and entering its own contracts with outside vendors. Moreover, both SBUs not only had their own senior vice president, but also had their own human resources manager who reported to that SBU's senior vice president. While a SBU senior vice president's decision to discharge an employee needed the final approval of the company's senior vice president of human resources, most remaining disciplinary decisions short of discharge were decided within the SBU. See also *United Gas, Inc.*, 190 NLRB 618 (1971) (less than system-wide units constituted an appropriate unit since each of the two units constituted a separate district, and district managers in each of these districts had a large degree of autonomous control over personnel matters within their districts).

In contrast, in *Colorado Interstate Gas Co.*, 202 NLRB 847 (1973), the Board found that the units sought by a labor organization, which sought certain employees employed in two of the employer's nine districts, were inappropriate because the employees in these two districts did not share a sufficient community of interest apart from other employees in the system to warrant their establishment as appropriate units for purposes of collective bargaining. The Board reached this decision because the company's system-wide procedures applied in posting and bidding for openings in higher paying positions; the district superintendents lacked substantial autonomy with respect to day-to-day personnel matters, the wages, hours, and conditions of employment throughout the employer's system were uniform; and substantial temporary interchange occurred among employees.

In the instant case, I find that neither of the Petitioner-proposed units constitutes a well-defined administrative segment of the utility company's organization. Unlike the SBU units in *PECO Energy Co*., neither the four-town unit nor the Midwest Operations Unit proposed by the Petitioner after the Employer's August 2002 reorganization has became "semi-autonomous" or was intended to operate as an individual profit center. In contrast to both SBUs in *PECO Energy Co.,* each of which had its own human resources manager who reported to that SBU's senior vice president, the Employer in the instant case has a centralized HR department, overseen by a senior vice president and a single HR department which is actively involved in personnel matters throughout the system.

Like the Board's decision in *Colorado Interstate Gas Co.*, supra, I find that both of the units sought by the Petitioner are inappropriate because employees in these units do not share a sufficient community of interest apart from other employees in the system to warrant their establishment as appropriate units for purposes of collective bargaining. More specifically, I do not find that the employees in the four-town unit share a sufficiently distinct community of interest apart from other employees in the Midwest operations unit. I find that the employees in the Midwest Operations Unit do not share a sufficiently distinct community of interest apart from other employees in the Employer's Southern Operations district or Northern Operations district to warrant their establishment as appropriate units. More importantly, like the situation in *Colorado Interstate Gas Co.*, the Employer in this case has a system-wide procedure for posting and bidding for openings, and has uniformity of wages (aside from the small number of represented gas operation employees), uniformity of benefits, and numerous other terms and conditions of employment throughout these three operation districts. These uniform wages, benefits and personnel policies exemplify the functional and administrative integration of the Employer's Northern, Southern and Midwest operations. Furthermore, due to the final decision-making role of vice president of Operations and Engineering (such as permanently transferring, suspending, firing or whether or not to have a hiring freeze) as well as the significant role HR has in various personnel decisions and the need to abide by the Employer's numerous system-wide policies and procedures, both four-town Area Director Luck, as well as Midwest Operations Director Freeman, lack substantial autonomy in day-to day personnel matters. See also *New England Telephone and Telegraph Company*, 280 NLRB 162 (1986) (petitioned-for district-sized units found to be inappropriate because of the high degree of centralization in the company's labor relations and employment policies, which provided district managers limited autonomy, and because virtually all of the terms and conditions of employment, including hours, wage rates, wage progressions, fringe benefits, grievance procedures, work rules, job classifications, and duties within those classifications, were uniform throughout the entire department).

3. Undue disturbance to the Employer's ability to perform its necessary functions:

Not only must an appropriate non-system wide unit in a public utility company constitute a well-defined administrative segment of the utility company's organization, but, also, the unit must be able to be established "without undue disturbance to the company's ability to perform its necessary functions." *PECO Energy Co*., supra, 322 NLRB at 1079. In finding an appropriate unit in *United Gas, Inc*., 190 NLRB 618 (1971), the Board took into consideration the fact that the there was no "satisfactory or documented evidence" that a work stoppage in one district would have a substantial impact on the operations of other districts.

In this case, there is strong evidence that a work stoppage in either the four-town unit or the Midwest Operations Unit would have a substantial impact on the operations of other districts due to the interdependence of these units. The Employer presented convincing evidence that 90 percent of the Employer's natural gas for New Mexico comes from locations within or near the four-town unit. The larger Midwest operations unit, and a work stoppage, could prevent or delay repairs to malfunctioning key facilities or pipelines within those areas and, thereby, curtail the delivery of gas beyond these geographic areas serviced by employees in either of the requested units. In *Tennessee Gas Pipeline*, 254 NLRB 1031, 1032 (1981), the Board found that the petitioned-for one-district unit was not an appropriate unit, not only because it was not a major administrative district, but, also, because if a compressor shut down within that district due to a labor strike, a severe shortage of gas supplied to all points north of that district would result, and, even if the employer could bypass that district, the resulting disruption to the gas flow would seriously deplete the gas supply stored in storage areas north of the district.
Cf. *Southwest Gas Corporation*, 199 NLRB 486, 486 (1972) (a division-wide unit sought by the labor organization found to be appropriate because there is "no indication" that a work

stoppage in one division would have a substantial impact on the employer's other divisions since that particular division had its "separate source of natural gas"); *Southern California Water Company*, 220 NLRB 482, 483 (1975) (a division-wide unit sought by the labor organization found to be appropriate because there was "uncontradicted testimony" that the company's operations were "not so functionally integrated that a cessation of work in one division would cause a system-wide shutdown of operations").

Although there is no bargaining history that precludes the units sought by Petitioner from being found appropriate, I find that neither of the petitioner-proposed units constitutes a well-defined administrative segment of the Employer's organization and that neither of these units can be established without undue disturbance to the Employer's ability to perform its necessary functions. Under these circumstances, I find that there is not compelling evidence that collective bargaining in either of these two units, less than system-wide in scope, is a feasible undertaking. I find that either of these requested units would unduly fragment the Employer's operations, in contravention to the *Baltimore Gas and Electric Co.*, admonition against fragmentation.

Based upon the foregoing, I find that neither of the petitioner-sought units is appropriate for purposes of collective-bargaining within the meaning of Section 9(b) of the Act. In these circumstances, I shall dismiss the petition.

ORDER

IT IS HEREBY ORDERED that the petition in this matter be, and it hereby is, dismissed.

REQUEST FOR REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570. The Board in Washington must receive this request by June 10, 2003. A copy of the request for review should also be served on the undersigned.

Dated at Phoenix, Arizona this 27th day of May 2003.

/s/Cornele A. Overstreet
Cornele A. Overstreet, Regional Director
National Labor Relations Board-Region 28

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